

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL DENTON,
Plaintiff,

v.

SHERIFF PASTOR, et al.,
Defendants.

CASE NO. 16-5314 RJB-DWC
ORDER DENYING APPEAL

This matter comes before the Court on the Plaintiff's Motion to Appeal Order Denying Plaintiff's Application for Court Appointed Counsel. Dkt. 12. The Court has considered pleadings filed in regard to the appeal and the remaining record.

Plaintiff brings this civil rights action alleging Defendants violated his constitutional rights while he was in custody in the Pierce County, Washington Jail. Dkt. 1.

Plaintiff now appeals the U.S. Magistrate Judge's decision to deny his Application for Court Appointed Counsel. Dkt. 12. Plaintiff complains that he is not being given adequate access to the law library, even though the jail is aware of his pro se status. Plaintiff asserts that the jail is throwing away his legal mail. *Id.* Plaintiff argues that he has been unable to articulate his positions. *Id.*

Attached to Plaintiff's appeal, is a pleading entitled, "Order to Show Cause for an [sic] Preliminary Injunction & a Temporary Restraining Order," in which Plaintiff seeks an order enjoining Defendants from prohibiting him access to the law library, throwing away his legal mail, and taking his legal documents. Dkt. 12-2, at 1. Plaintiff also files a Memorandum of Law (Dkt 13) and Declaration (Dkt. 14) regarding this pleading.

For the reasons stated below, Plaintiff's appeal should be denied, and Plaintiff's pleading entitled, "Order to Show Cause for an [sic] Preliminary Injunction & a Temporary Restraining Order" (Dkt. 12-2), and the remaining case, should be re-referred to the Magistrate Judge.

Appeal of Order Denying Application for Court Appointed Counsel. Fed. R. Civ. P. 72 provides in relevant part as follows:

(a) Nondispositive Matters. When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

The Order of the U.S. Magistrate denying the Plaintiff's Application for Court Appointed Counsel (Dkt. 7) should be affirmed. It is not clearly erroneous or contrary to law.

Under 28 U.S.C. § 1915(e)(1), the court may request an attorney to represent any person unable to afford counsel. Under Section 1915, the court may appoint counsel in exceptional circumstances. *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984). To find exceptional circumstances, the court must evaluate the likelihood of success on the merits and the ability of the plaintiff to articulate the claims pro se in light of the complexity of the legal issues involved. *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

Plaintiff has not shown that he is likely to succeed on the merits. Plaintiff has not shown he is unable to articulate the instant case's claims *pro se*. Despite his assertion that Defendants are not allowing him access to the law library, his pleadings contain several citations to legal authority. Plaintiff is able to articulate his positions adequately and raise issues to the court. Plaintiff's claims are not complex. The Order of the U.S. Magistrate denying the Plaintiff's Application for Court Appointed Counsel (Dkt. 7) should be affirmed.

Re-Referral. The pleading entitled, "Order to Show Cause for an [sic] Preliminary Injunction & a Temporary Restraining Order" (Dkt. 12-2), and the remainder of this case, should be re-referred to the Magistrate Judge.

It is **ORDERED** that:

- Plaintiff's Motion to Appeal Order Denying Plaintiff's Application for Court Appointed Counsel (Dkt. 12) **IS DENIED**;
- The Order of the U.S. Magistrate denying the Plaintiff's Application for Court Appointed Counsel (Dkt. 7) **IS AFFIRMED**; and
- The pleading entitled, "Order to Show Cause for an [sic] Preliminary Injunction & a Temporary Restraining Order" (Dkt. 12-2), and the remainder of this case, **IS RE-REFERRED** to the Magistrate Judge.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 14th day of June, 2016.



ROBERT J. BRYAN
United States District Judge